

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 ) MB Docket No. 05-  
311  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

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**COMMENTS OF NEWTON COMMUNICATIONS ACCESS CENTER, INC.**

These Comments are filed by NEWTON COMMUNICATIONS ACCESS CENTER, INC. (NCAC, Inc.) in support of the comments filed by the Alliance for Community Media ("Alliance"), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors ("NATOA"), and other national local government organizations. Like the Alliance, NCAC, Inc. believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access ("PEG") services in our community.

**Cable Franchising in Our Community**

**Community Information**

Newton, Massachusetts is a city with a population of 84,000. Our franchised cable providers are Comcast and RCN. Our community has negotiated cable franchises since 1984.

Our franchise requires the cable operator to pay a franchise fee to NCAC, Inc. in the amount of 4% of the cable operator's gross revenues, and to the City of Newton of 1%. The revenues for franchise fee purposes are calculated based on the gross revenues of the operators, in accordance with the Federal Cable Act.

Our franchise requires the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have three channels devoted to public-educational-governmental access.

Each of the two competitive cable operators in the city have provided or will have provided by the termination of the franchise period approximately \$22 per subscriber over the life of a ten year agreement as capital equipment funding for PEG access.

Comcast has provided a direct fiber optic cable link to its head end for the delivery of PEG access programming. Its Hybrid Fiber-Cable Institutional Network was decommissioned in 2004, and it now pays a fee of \$24,000 per year to the City of Newton in lieu of maintaining an Institutional Network.

RCN built a fiber optic Institutional Network for use by the City in 1998 when it entered as a competitive Open Video System. The estimated cost of that I-net is \$500,000. It connects all City buildings, Police and Fire headquarters and stations, and all City schools. It also provides audio and video signal delivery from NCAC, Inc.'s remote TV production facilities in the Board of Aldermen chambers, the School Committee meeting room, Newton Free Library's Drucker Auditorium, four middle schools and two high schools. This network also carries the computer data traffic of all City and school departments. In 2001, RCN applied for and received a cable television franchise from the City of Newton.

### **PEG Access Services**

NCAC, Inc. has provided access services in our community for fifteen years. The number of access channels we operate is three. In our most recently completed fiscal year, NCAC, Inc. provided 3,356 hours of new original local programming to the cable subscribers. The community used our equipment and facility 8,074 times for 20,285 hours of use. Below are the highlights of our services to the community.

- Video bulletin board with text and graphics for announcements by government, schools and non-governmental, community-based organizations.
- Coverage of City of Newton budget hearings and those of Newton Public Schools.
- Coverage of select Newton Board of Aldermen committee meetings including Long-Range Planning and Programs & Services.

- Community-produced television programming for special interests including programs for Russian language viewers, deaf and hard-of-hearing viewers, the Newton History Project, Green Decade, Newton Conservators, Newton League of Women Voters, Newton Special Olympics, and the Newton-Needham Chamber of Commerce.
- Staff-produced television programming on topics of interest to the local community, including a weekly newscast (*Newton News*); *Legislative Roundtable*, with our City's four state representatives and senator; *At the Library* featuring author interviews and library activities; *View from the Hall* featuring Mayor David Cohen; the annual Newton Summer Concert series; and annual commencement ceremonies from two high schools and Boston College.
- Dedicated channel capacity specifically for non-profit organizations to air locally-produced programming.
- Dedicated channel capacity specifically for religious organizations to air locally-produced programming.
- Hotline studios for live, interactive programs that allow local experts to answer viewer questions.
- Free viewing of cable service at selected public sites.
- Media literacy and production training for neighborhood based community organizations and individuals.
- Video production courses.
- Video production facilities including studio, field, and both linear and non-linear computer-based editing.
- Support to Media Training Centers in local schools, enhancing learning opportunities for students.
- Satellite program reception and redistribution.
- Technical design, installation, and maintenance support.
- Local political coverage, candidate platform statements and candidate debates during campaign season.

- Live, and tape-repeated gavel-to-gavel coverage of Board of Aldermen and School Committee proceedings.
- Distribution of community college and university educational programming.
- Internet access at public sites.
- Computer literacy training for youth and families.
- Unique non-local programming available via satellite feed such as *Mosaic*, news from 19 countries in the Middle East.
- Election night coverage.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law. In Newton, public hearings were held for both Comcast (2000) and RCN (2001) to offer their response to a Request for Proposals for cable TV services in the City.

### **Competitive Cable Systems**

The City of Newton...

- granted a renewal franchise to Comcast in 2001 and that provider is providing service in my community today.
- granted a competitive franchise to RCN, a cable overbuilder, in 2001 and that provider is providing service in my community today.
- has recently been approached by Verizon to provide cable TV service in the City and is negotiating a cable TV franchise agreement. (Note that

Verizon has obtained cable TV franchise agreements in three other Massachusetts municipalities in recent months.)

## **Conclusions**

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Newton. Indeed, throughout the country, the majority of subscribers to current state-of-the-art high-speed internet access are cable TV company customers. The local franchising process has not impeded the roll-out of cable modem services.

As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises can also ensure that the cable operators provide the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to have a Federal bureaucracy in Washington handle matters of primarily local interest.

Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Newton Communications Access Center, Inc. therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law..

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of “Community Reinvestment” through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community’s property;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,  
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